LEGISLATIVE BUSINESS

Non-official Bills

1. The Cochin Agriculturists Relief Act (Amendment) Bill

Clause 2 *(Cont.)*

Mr. President: The House will now resume discussion on Mr. P. Kumaran Ezhuthassan's Bill to amend the Cochin Agriculturists Relief Act. I understand there is some apprehension as to the exact stage this Bill reached yesterday. The Motion that the Bill be taken into consideration was carried and the House was engaged in the consideration of clause 2.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, yesterday, before the Council rose in the afternoon I had referred to the decision of the Hon'ble High Court which necessitated the introduction of this amending Bill by me and I had also submitted to this House what the purport of that decision is and stated that the decision lays down that in cases where a document has been executed in settlement of the amount of arrears due from the poor tenant, the principle to be applied in scaling down is the principle laid down in sections 7, 8 and 9 and not the principle laid down in section 16 as far as pattom is concerned and what is laid down in section 17 as far as michavarom is concerned. I characterised the result of that decision as a mighty whittling down of the relief that was given to hard hit agriculturists who had to pay arrears, not for any want of willingness on their part but due to sheer impossibility to pay due to the depression that was raging for many years. That was the reason why such ample relief has been given by section 16 and also section 17 to the agriculturist tenants in the State. That was unfortunately whittled down very much by the decision of the High Court. I had stated all these yesterday and I wish to make a few more observations and close my remark upon the meaninglessness of the opposition that we had here to a clause, namely clause 2 which was accepted by the Government members on the Committee.

Now in the light of the explanation that was offered yesterday, a distinction has been drawn that it was not the Government spokesman in the person of the Hon'ble the Law Member and the Hon'ble Member for Revenue that subscribed their signatures to that report but it was the individuals in the Law Member and personality of the Member for Revenue that had subscribed and not in their official capacity. That was the statement, Sir, as I characterised yesterday, for which I was not prepared as also this House was not prepared. Any how, these statements will be there and they will be understood by the public of Cochin in the light in which it ought to be understood and the necessary steps to see that such statements are not hereafter made by the responsible members of the Government will certainly be taken by the 15 lakhs of people living in the Cochin State. I entreat, Sir, that this be the last time when such attempts are made by Government spokesmen: something subscribed to and agreed to by way of compromise at a certain stage on matters affecting the agriculturists population of the State to be retracted from and opposed later on and an explanation of the sort that I mentioned here now is something abominable, Sir. Therefore I make the entreaty again that this be the last time when such things are attempted by any section of the House especially the Government section.

What, Sir, is the mischief of that decision, what is the ample scope of the original amendment and what is the restricted scope of the amendment as reported by the Select Committee? These things are to be looked into with an amount of patience which alone will help you in matters of legislation and not the flittering talks as we had yesterday ranging upon all the sections of the Act and not confining their remarks to clause 2 which alone was the matter under consideration. It would appear, Sir, a reading of the proceedings would show that-that it was the motion for consideration of the Bill that was being discussed and not a particular clause namely clause 2.

Mr. President: The motion that the Bill be taken into consideration was put and carried. It was after that motion had been carried that the consideration of clause 2 was taken up.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Yes, Sir, I understood like that and it was actually like that. But I was referring to the nature of the discussion starting from Hon'ble Member for Law passing on to the Hon'ble Member representing Ernakulam to whom pointed reference with a foolish hope to get the vote not only of the individual but of the block of which he is the head was cleverly made by the Government. My submission, Sir, is inclusive of the astute lawyers that both of them are and a layman like the Hon. Member for Kanayannur Ezhuvas all were discussing the whole Bill and not clause 2. It will be seen that the whole time from 12.30 to 3.30 yesterday was wasted in this manner. If they had confined their remarks to clause 2 only the whole matter could have been disposed of in about ten minutes at the most.

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(A voice) It is you who are wsting time.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: But, Sir, when one who is moving an amending Bill is on his legs meeting the arguments of the opposition to the measure to say that he is wasting time, is rather something which I do not wish to describe, much better that such observations were not made. As a poor lawyer I have to do justice to my profession and as a legislator though I do not lay claim to any such position, still so long as I am here let me justice do to my role till I am driven out by interested parties.

Section 16 of the Act says "Subject to the provisions of sub-section (4) the arrears of pattam and interest thereon payable by an agriculturist to a landholder, Jenmi, or intermediary at the commencement of this Act whether the same be due as such or whether a decree has been obtained therefor, shall be scaled down in the manner specified in sub-section (2)".

The relief given in sub-section (2) is very ample indeed. The Agricuiturists Relief Act came into force on the first Chingam 1115. What is provided in clause 2 or section 16 under which arrears of pattam have to be scaled down, is very ample. I am greatful to those persons who were responsible for the passing of this Bill. What is stated is worth reading.

"All arrears of interest outstanding at the commencement of this Act and the entire pattam in arrears for the period prior to the first day of Chingam 1107 and fifty per cent of the pattam in arrears for the period subsequent thereto up to the commencement of this Act shall be deemed to be discharged and only the balance shall be deemed to be the arrears due from the agriculturists at the commencement of this Act".

In clause 3 further ample provision is made for the payment of this reduced amount consistent with the capacity of the person who has to pay it. That is not quite relevant to be read to show the amplitude of the provision. To Section 16 (1) I had proposed an all-embracing amendment which as a matter of compromise was whittled down and it is now printed in the Select Committee Report which reads like this:—"In sub-section (1) of section 16 of the Cochin Agriculturists Relief Act, hereinafter referred to as the Act, (i) the following words shall be inserted between the word "therefor" and "shall"—

'Or whether the same has been adjusted by the execution by the agriculturist to the landholder, Jenmi or intermediary of a promissory note, mortgage or other instrument". The clause as amended would read"....whether the same be due as such or whether a decree has been obtained therefor *or whether the same has been adjusted by the execution by the agriculturist to the landholder, jenmi or intermediary of a promissory note mortgage or other instrument, shall* be scaled down in the manner specified in sub-section (2)". That is the amendment to the section 16 (1) to undo the mischief of that decision which gave rise to this amendment that has been agreed to by the Select Committee inclusive of two Government members.

The 9 Cochin Law Journal judgment is not also an unanimous one. One of the learned judges (Thomas Manjuran J) has written a dissenting judgment. The dissenting judgment gives very profitable and intersting reading. It was following a judgment of the Madras High Court that the majority decision in IX Cochin Law Journal was taken. But the dissenting judge has stated that the import of the Madras decision is not to the extent that the majority judges have deemed fit to import into decision to snatch away the relief that is given by sections 16 and 17. That is the trend of the argument of the dissenting judge and I agree with the dissenting judge in the line of the reasoning adopted by him. It is a privilege, Sir, to agree with good things.

There is a difference between the original amending clause and the amending clause as reported by the select committee. I wanted the relief under section 16 to be given to cases not only where a document has been taken in lieu of arrears but even in cases where such documents as documents or promissory notes are acted upon by negotiation or assignment or otherwise, *which cannot be negotiated*. But that extented provision of the original amending clause was as a matter of compromise reduced and what is printed in the report is the result of the compromise. Therefore my respectful submission is, at least this limited relief from the mischief of that unwanted decision of the High Court be granted and the Government be pleased to withdraw their opposition and see that clause 2 is passed *nem con*. That is my prayer. Ordinary notions of legislation will tell us, Sir, that if an Act of legislature had been, as a result of the loose way in which words had been used in it, as has been the case in the matter of the Agriculturists Relief Act,—I am not blaming the legislature, because it was a hurried peace of legislation—interpreted in a way never contemplated by the legislature and a wrong decision has been given, wrong in the sense that it does harm to the beneficiary under the peace of legislation, ordinary rules and principles of legislation tell us that it is up to the legislature to intervene and see that the intention of the legislature with reference to the legislation in original is restored by making changes in it so that there is absolutely no possibility of wrong interpretation by the judicial authorities. That is the

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object of my amending legislation. This sort of things has been done in British India necessitated by Privy Council decisions. I am sure, Sir, an eminent retired Chief Justice of our High Court who is now in our midst as an Hon'ble Member will be able to bare out that statement of mine and the cogency of the statement I have made. Even our Government, soon after the passing of the Verumpattamdars Act wherein a clause relating to exemption from the definition of the term Verumpattamdar—that is a lessee under leases granted by a receiver appointed by court will not be considered as a Verumpattamdar—when moved by me at the initial stage was opposed by the Government saying that even without express statements such leases would be exempted, had come forward with an amendment to the same effect as soon as the Hon'ble High Court laid down that the definition of a Verumpattamdar as made in the Act takes in such leases and said, that if the intention of the legislature was otherwise, the Government would do well to come forward with an amendment to the definition of Verumpattamdar. Immediately there was response. The next day after passing judgment the Government came to this House with a Bill to amend the definition of Verumpattamdar. But in this case no such thing was done by the Government. Not only did they not come forward with an amending Bill-but instead of that, when a non-official member brought an amending Bill they first opposed and later wanted restrictions to be imposed. As compromise is better than fight in certain cases we agreed to a compromise; now, even that compromise is a formula which is not acceptable to Government. That is the last thing that I expected of the Government. With these comments I request the House to unanimously pass this amendment, the Government gracefully withdrawing the opposition. I am sorry that I had used strong remarks but it was due to the strength of the feeling in me when I think of the agriculturists and the mischief of the decision and later the mischief of the opposition of the Government. I may be excused if I have wounded any section of the House. I have done.

Motion put and declared lost

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: A poll, Sir.

The House divided

Ayes	*Noes*
1. Mrs. Dakshayani Velayudhan.	1. Mr. C. N. Ittiravi Nambudiri.
2. ,, T. Francis.	2. ,, S. S. Koder.
3. Mr. K. R. Ramakrishnan	3. Dr. S. S. Rao.
4. ,, Natarajan Chettiar.	4. Mr. P. E. Warne.
5. ,, T. K. Nayar.	5. Rao Bahadur T. S. Narayana Ayyar.
6. ,, P. Narayana Menon.	6. Mr. B. V. K. Menon.
7. ,, P. Kumaran Ezhuthassan.	7. Rao Sahib A. Madhava Prabhu.
8. ,, P. Govinda Menon.	8. Rao Sahib I. N. Menon.
9. ,, V. R. Krishnan Ezhuthassan	9. Rao Sahib P. V. Raphael.
10. ,, P. Achyuta Menon.	10. Mr. M. Sivarama Menon.
11. ,, P. T. Jacob.	11. ,, K. S. Raghavan.
12. ,, C. S. Panicker.	12. ,, C. J. Mathew.
13. ,, P. K. Paul.	13. ,, S. Venkiteswaran.
14. ,, P. Sankara Menon.	14. Rao Sahib M. M. Paul.
15. ,, M. K. Raja.	
16. ,, M. I. Paul.	
17. ,, G. S. Dhara Singh.	
18. ,, P. Mani.	
19. ,, A. Eachara Menon.	
20. Rao Sahib K. Ayyappan.	
21. Mr. K. Balakrishna Menon.	
22. ,, L. M. Pylee.	
23. ,, K. S. Panicker.	
24. ,, K. T. Achyutan.	
25. ,, Jos. K. Verghese.	
26. ,, K. I. Velayudhan.	
27. ,, P. V. Sebastian.	
28. ,, Paramel Ipe Ipe.	
29. ,, M. K. Varghese.	
30. ,, K. K. Kannan.	
31. ,, K. Kochukuttan.	

Motion carried by 31 votes against 14

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Clause 3

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I beg to oppose this motion which deals with a consequential amendment to the clause which has now been voted by the House. The clause which has now been voted has reference to section 16. Section 17 refers to the consequential amendments contained in this clause. There is nothing new to be said in support of my opposition and I do not wish to take up the time of the House. I oppose clause 3.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I agree with the Hon'ble Member for Law that the time of the House may not be wasted and move that clause 3 may be passed for the same reasons as those for clause 2 just now passed by an overwhelming majority.

Motion put and carried

Amendments

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I move that after clause 3 the following may be added as clause 4.—

In section 24 of the Act delete the words "such application being made within ninety days of the commencement of the Act."

This clause is attempted to be introduced as an amendment by me for the reason that six out of the eight Hon'ble Members of this House who were put on the original Select Committee voted, rather reported or recommended the deletion of this life clause, and being presented at the last meeting was re-committed to a new Select Committee composed of the same number of members as before plus one. It was re-considered by a committee of 9. I have yesterday stated, Sir, that this committee was divided in their opinion once again. That report is before you. What led to the amending clause was already explained, which according to me is the great mischief that was wrought by the decision of the case reported in 10 Cochin Law Journal. That, Sir, was a decision which said that no relief is to be granted to agriculturist-debtors who failed to apply for scaling down decrees before 30th Thulam 1115. Till now we were on agriculturist-tenants who had to pay arrears of pattam and michavaram. This amending clause relates to agriculturist-debtors mentioned in section 7 of the Agriculturists Relief Act; the method of scaling down has been provided for under sections 8 and 9 and some other sections also. Clause 7 is the operative clause of the Agriculturists Relief Act as originally passed, but after the pronouncement of this judgment reported in 10 Cochin Law Journal that clause no more happens to be the operative clause. What was considered by the Legislature at the time of the original legislation to be the life-clause or the most operative clause, the clause which gives relief to agriculturist-debtors was thrown, Sir, to the winds by that decision, and in its place came section 24 appearing in the Chapter on Miscellaneous and Procedure. In other words, Sir, section 7 of the Agriculturists Relief Act which gives relief to the agriculturist-debtors was made to be controlled by section 24. I am constrained to read section 7 clause (1) of which says "Notwithstanding any law, custom, contract or decree of court to the contrary, all debts payable by an agriculturist at the commencement of this Act, *shall be scaled down* in accordance with the provisions of this Chapter". Clause (2) says "No sum in excess of the amount so scaled down shall be recoverable from him or from any land or interest in land belonging to him nor shall his property be liable to be attached and sold or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of *the sum as scaled down under this Chapter.*"

The next clause is not relevant for our consideration now, although the Government may probably refer to that. Then the methods of scaling down are provided in sections 8 and 9, which it is not necessary now to be read, and section 10 also has a place. The heading of the chapter is 'scaling down of debts'. I was reading only the first section in this chapter, namely section 7 that chapter contains 15 sections of which section 7 is the most operative section. In the chapter "Miscellaneous and procedure," there is this unhappy clause which is the subject matter of the amendment appearing in section 24, which reads: "Where before the commencement of this Act, a Court has passed a decree for the repayment of a debt, it shall, *on the application of any judgment-debtor* who is an agriculturist or in respect of a Hindu joint family debt, on the application of any member of the family, whether or not he is the judgment-debtor, or *on the application of the decree-holder*, such application being made *within 90 days of the commencement of this Act*, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Cochin Code of Civil Procedure, XXIX of 1111, amend the decree accordingly or enter satisfaction, as the case may be :

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Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs decreed to the creditor."

Now, Sir, it is the interpretation of this clause "within 90 days" in Section 24, appearing in the chapter on Procedure and Miscellaneous which, according to the interpretation put upon it, prescribes a period of limitation, a very small period of limitation of 90 days. From the date that desired the relief granted by section 7, of that decision, as laid down in clear and unambiguous terms "that if a decree debtor or judgment debtor had failed to apply to the Court before 30th Thulam 1115 to have his decree scaled down, in accordance with Chapter II, if for any reason he has failed to do it, the benefit of the Act would not enure to him"—what little is granted by the Agriculturists Relief Act though Chapter II is taken away by the interpretation put upon section 24 of the Act by the Hon'ble High Court. Even that limited relief granted by the Act is denied to him. That is the extent of the mischief of the judicial pronouncement. This is a question that all the Hon'ble Members of this House have to consider and consider seriously.

We have got an ampler and more exhaustive discussion in the 1120 Cochin case, which is referred to in my dissenting minute. That is the last decision, I believe, on the subject, or at least one of the latest. We are not now concerned with all the arguments contained in the High Court Judgment. It is enough for our immediate purpose to note that as a result of these decisions even the limited relief granted by Chapter II, is denied to the debtor. He has to pay wholly whatever amount, even 60 percent or 100 percent interest appearing in a decree for the fault of its not having been applied to be scaled down within 90 days, or in other words, the decree holder can enjoy the whole fruits of the decree as passed before 1114 whatever be the rate of interest and whatever be the iniquitious nature of the decree.

Relief is denied to the debtor as a result of these decisions. This house may be pleased to note that till the date of the decision this section and the subsequent section of the Act relating to the scaling down of decree debts had been understood by the litigant public, by the unfortunate agriculturist debtor, to be available to them at all times. That belief of theirs was based upon the conduct of the subordinate judiciary. And this position was confirmed by a decision of the High Court passed more than two years after the Agriculturists Relief Act came into force.

The said High Court decision said that Section 24 cannot be allowed to control Section 7. I am quoting the words of a learned Judge of the High Court, who was a party to that decision. It was in 32 Cochin 487, to which an Hon'ble member of this House sitting here with us now was a party in the capacity as a Judge of the High Court and it was he who laid down "that section 24 is not to control section 7". Or in other words what relief is granted in section 7 cannot be denied by section 24, though a period of 90 days has been fixed in it to apply for scaling down and the debtor had not in fact applied within that time.

The High Court at that time understood and interpreted the law correctly and said that section 24 will not control and shall not be allowed to control Section 7. So it comes to this. The court of the State interpreted the Act in such a way that the relief granted under the scaling down sections was available to debtors whether they applied for scaling down within 90 days or failed to do so. But when we come to 10 Cochin Law Journal case more than 4 years after the A. R. Act came into force and was worked by all the courts of the State according to the true intention of the Legislature we find a departure and the relief granted by the Act and enjoyed by the debtor till then is denied to him. The scope of the amendment is, Sir, only to undo this mischief. The basis of these two decisions, 10 Cochin Law Journal and 120 Cochin is the presence of the clause "within 90 days" in section 24. Therefore, if that is the reason which compelled the High Court to lay down the law as done in these two decisions the relief from its mischief can be had by the removal of the expression "within 90 days" from section 24 and that is all what clause 4 which I have moved as an amendment seeks to do.

Since I find that the Government did not come forward with an amending Bill to give expression, in unambiguous language, to the original intention of the Legislature by removing the words "within 90 days" which is not in the corresponding section of the Madras Act I, in my humble way, come up to this House with this Bill at the earliest opportunity, that is Makaram 1118. I am not responsible for the chequered career the Bill had and I am really glad that at least two years from the date on which I placed the amending Bill before this House, it has come up for consideration clause by clause.

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My respectful submission is that this clause that was reported against by the original Select Committee, reported against once again by the two Government members on the Committee with the solid support of the Hon'ble leader of the Prajamandal Party, for reasons stated in the so called majority, minority report and amplified and explained by my Hon'ble friend yesterday, though he had, after agreeing with the so called majority, found it necessary to write an additional note; but in spite of that came forward assuring the solid support of the 11 members of his party and strongly recommended by the remaining six out of the nine members of the second Select Committee be passed unanimously by this House.

My respectful submission, at this stage, when we are considering the amendment which is none other than clause 4 of the draft Bill, is to make an appeal, an earnest appeal, that the Government may be pleased to give up their opposition and not stick to it in the name of consistency. Consistency, when insited upon in any nefarious activity does not go by the name of consistency but perversity. Consistency, Sir, is good for doing good things for the public not for perpetuating hardships. Recollect the situation properly. This is an appeal to the Cochin Government. Let it not be known by the people of Cochin, that the Government which wanted to come at last to the relief of the agriculturists population of the State in the year 1114, by the time it came to 11 21 fell into deep mire. I am interested in the fair name Sir, of the Government because it is my Government, and that of the 14 lakhs of people who live in Cochin. I am very much concerned at your fortune. Therefore, Sir, do not foolishly stick to your opposition in fling the name of consistency. Please be magnanimous enough to pass this amendment. Show to the public, please that we are persons who can correct their mistakes, inclusive of the Treasury Benches. I am indeed surprised to find, Sir, from the non-official side also some support coming to the Government opposition; I am referring, Sir, to the 5 members who voted with the Government on the previous clause, I can understand the attitude of one of these five because he represents the interest of the landlords, the capitalist interest. Therefore he stands in a different category. I request the other 4 Hon'ble members not to soil their hands by touching the mire. My respectful submission is, Sir, that this amendment may not be opposed. Let it be, Sir, the last word on the amendment. Let it be not opposed. When I have the support of the block of 11 which says it stands for the good of the people and when I have the support also of the Ministerialist Party, which is now in office. I have nothing to fear though the Government oppose. But my appeal to the Government and the other four is that they may be pleased not to oppose. I therefore commend this amendment to the House for their acceptance.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, yesterday on account of some misapprehensions with regard to the scope, the Hon'ble Member for Vadakkancheri happened to discuss all these arguments.

Mr. P. Govinda Menon *(Ernakulam):* Yes, yes.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I never did it.

Mr. M. Sivarama Menon *(Advocate-General):* I may also claim my share of guilt in having referred to the entire amending Bill in discussing clause 2. I thought that a picture of the full scope of the amending Bill may be useful to the Hon'ble Members even at an early stage. Anyway I shall have to formally go through the grounds of opposition in brief even at the expense of repetition.

The Agriculturists Relief Act was passed when the economic condition of the people was at a very low ebb. Such a condition persisted from 1106. Now that the Act has been worked for more than 6 years, it is I think too late to think of amendments to the substantial provisions of the Act by which things settled by the debtor and creditor will become unsettled. I have already pointed out that no case has been made out to substantiate the plea that the legislature was in any way responsible for laying down the period of limitation in such ambiguous terms that there was justification of some sort to engender the feeling of misapprehension with regard to the scope of the period of limitation. If the legislature responsible for the Act deliberately introduced the period of time of 90 days, what is the justification now for disturbing that position? Fluctuation in rules of limitation is bound to prejudice one of the parties. The rule of limitation must apply equally to all. Failure to apply within the time may be due to several reasons out of which the ground founded on a bon afide misunderstanding of the law can only be very very remote. Ignorance of law is no excuse. At the time the Act was passed the rule of limitation was found absolutely necessary to enable the creditor to know what he is entitled to realise and to enable the judgment debtor to ascertain what he shall have to pay. Reason demanded such a course

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and there are no outweighing reasons why the time limit should now be done away with. The economic condition of the people has been very good for some time past now and there is no justification to grant the concession now when agriculturists are living in plenty.

Legislation tending to benefit only one section of the community is bound to have a deleterious effect upon the confidence of the public in the legislative activities of the Government as a whole. Public confidence may be shaken and it may seem strange that we are now attempting an amendment to a special statute which must have ceased to be on the statute book with the emergence and continuance of prosperous times for the agriculturists.

Sir, I therefore oppose the motion.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Since I feel, Sir, any argument which I advance in this House is not going to convince the Treasury Benches, I wish only to expose the fallacy of the arguments of the Government in opposing this amendment. Wild allegations have been made. What are the circumstances that forced the Cochin Government to pass the Cochin Agriculturists Relief Act? Is it the case of the Cochin Government that the prices of agricultural commodities have increased in the real sense. Figures of prices, true, have changed; greatly increased. Is it the case of the Cochin Government that the prices of commodities have gone up abnormally? When paddy was selling at 7 annas a para the cost of producing it was only 2 annas, for labour was very cheap then. Now the selling price of paddy, it is true, is Rs. 1—6—0 a para. What is the cost for producing that paddy? Any man who is in touch with the agricultural operation and with the cost of producing this paddy for which you pay Rs. 1—6—0 will have to admit that it is much more than what the Government pays for it, *viz.*, Rs. 1—6—0. Another argument was the fact that all the Land Mortgage Loans were paid off, so much so that the Bank was forced to reduce the rate of interest. What is the real reason for the loans being paid up? Is it due to high prices of agricultural products? Is it because of the rise in the price of commodity or is it because of the rise in the price of lands? The value of lands has increased and therefore it has been possible for persons owning lands to sell them at abnormally high prices, lands, which were previously mortgaged.

Mr. A. Eachara Menon *(Chittur-Tattamangalam):* How is it?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* By writing documents of assignments *(Laughter).*

Mr. A. Eachara Menon *(Chittur-Tattamangalam):* That alone you know.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I have answered an unintelligent question in the manner it deserves to be answered.I don't want to be interrupted in this fashion

I cannot be contradicted when I state that the repayment of agriculturist debts is not due to the rise in the price of the commodities produced but only due to the rise in the price of the lands being even 10 times higher than before. Do you know how much more you have to spend in agricultural operations to get the paddy selling at the present rate? You have to think of the selling price of Rs. 1-6-0 in relation to the amount you have to spend for the production. You don't exercise your minds in that way. The cost of production for one para of paddy which is produced now was the cost of production of several paras of paddy before. You have to view the question from the stand-point of all the people of Cochin and not from the stand-point of the people belonging to your group, the capitalist group and the highly paid set. Should not the Government which have got the interest of the whole population of the State have come forward with the amendment? The very fact that you have not done it for the last two years shows the class to which you belong.

Another argument raised by the Advocate General was that soon after the legislation was passed the office used to be raided by persons who wanted 8 annas stamps for putting in scaling down petitions. That was the statement made yesterday. A quarterly statement regarding the extent of scaling down used to be published. The latest statement published in 1121 Vrischigam Gazette shows the figure to be very small, comparitively. What has been stated by the Hon'ble Law member as the reason for it? The argument was most flimsy. What is the reason for the smallness of the amount in the latest report. The most important reason is that a good majority of the cases have already been paid up in the case of vigilant decree-holders. The case of such decree-holders is covered by section 25 of the Act which provides for stay of execution till the debts are scaled down in 60 days. A good portion of the total extent of the dues have been paid during these 6 years. Those that remain unpaid may be cases where decree-holders were not vigorous in proceedings against the judgment debtor or it may be a case that remained unpaid in spite of the activities of the decree holder due to sheer inability to pay.

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Yet another reason and perhaps the strongest reason for the comparative smallness of the figures is the mischief of the decision which has necessitated this amendment. The judgment of the Court which denied the relief to the debtor is now nearly 3 years old. It is this unhappy decision of the High Court which claimed the relief of scaling down the decree that is the reason for the smallness of the published figures.

Another argument of the Hon ble Law Member was that the clause 'within 90 days' was deliberately introduced in section 24 of the Act. I am sure the Hon'ble Law Member when he argues this is having in his mind paragraph 14 of the Select Committee report of Karkadagam 1114. Yes it is there stated that the Committee think it is necessary to fix a period and they fix it at 90 days from the passing of the Act. But I ask the question whether they have given any reason for it. You find none in every action of man whether good or bad there must be a reason behind. What is the reason, Sir, what is the purpose here? I find nothing in the printed report of the Select Committee that is extracted in the last decision in 1121 Cochin as also in 10 Cochin Law Journal Case.

If any case has to be decided in a particular manner arguments for it can be found. You will find, Sir, that Maxwall who has been quoted in these judgments has also stated that when something is prescribed to be done by statute and no penalty is laid for non-compliance then that is only something which should not be considered as obligatory. Here in section 24 no penalty is prescribed for failure to apply within 90 days. But look at section 25, Sir. May I be allowed to read section 25.

Mr. President: The Hon'ble Member has exceeded the time limit.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I do not think so Sir; I have not exceeded.

Mr. President: The Hon'ble Member has exceeded by 10 minutes. If the Hon'ble member wishes to close I shall wait. I am waiting for the Hon'ble Member.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* In section 24, Sir, who are the persons mentioned to apply for scaling down? It is the judgment-debtor as also the decree holder. No penalty is fixed for the decree holder or the judgment debtor who fails to apply. Judgment debtor or decree holder shall apply for the scaling as laid down in Chapter II is all what is stated in it. While in section 25 a time limit is fixed and failure to apply within that time is vested with a penalty. According to the decisions of the High Court the decree-holder who has not applied within 90 days is not penalised. He is given the full fruits of the original decree. But the unfortunate judgment debtor who has failed is denied the relief granted under the Act. Why this differential treatment between two classes of persons who are asked to do one and the same thing? The decision in 32 Cochin made the debtors believe that they need not apply within 90 days. Now in 10 Cochin Law Journal they are told otherwise.

Mr. P. Govinda Menon *(Ernakulam):* Question.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Some Hon'ble Members will be interested in questioning. They can well do so.

Mr. Puthur Achyuta Menon *(Kallur):* Interested in passing it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* People can talk anything if they are minded that way. Let me not be interrupted in the course of arguments, which may be indulged in the courts but not in the legislature.

It is a case of two parties asked to do the same thing. One being not vested with any penalty for non-compliance while the other is forced to pay a penalty. This is something which is not decent not to speak of the illegality of it. In interpreting Section 24 the Hon'ble High Court has failed to give effect to the intention of the Legislature. What was the intention of the Legislature when it enacted the A. R. Act? One of learned Judges in the 1120 Cochin case says what it is. One of the Judges who has written the dissenting judgment says what it is in clear and unambiguous terms. In that judgment that learned Judge referes to the passage of this Bill throug the Legislature when he was the Hon'ble Member for Law *(Laughter)*. Even with that such helpful suggestion to make the Government move to amend the Bill, it is strange that the Government did not come forward with an amending Bill, but instead opposes a non-official move in that direction.

Now one more point: the res judicata. Is it an insurmountable difficulty? This legislature can very well say that the principle of res judicata will not apply. What after all is the

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A. R. Act? It says whatever be the contract between the parties, whatever be the decree such and such things alone need be done? It can do away with res judicata if that stands in the way of relief being granted. I know of a good many decree holders who want only to get over the period of limitation. They do not waste the next 8 annas stamp, necessary for giving notice to the judgment debtor. In such cases there will be no question of res judicata either. There are so many execution petitions like that. I am speaking from my every day experience as a lawyer.

Mr. P. Govinda Menon *(Ernakulam):* So you want another legislature to make this?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I put it like that with a purpose which you perhaps did not understand.

Another argument of the Hon'ble Member for Law, Sir, is this. What is the number of execution petitions, pending in various courts, of decrees passed prior to 1114, he asks. Have you not got the figures necessary? The Hon'ble Member for Law said the number has gone down, further. How does he know? Has he got the figures? Then he asked, even if we have the number of such pending execution petitions, have you got the information as to how many of them are agriculturists? You know, Sir, that the large number of people in Cochin more than 90 per cent or 95 per cent are agriculturists, and agriculturists alone. What is the definition of the term agriculturists as given in the Act? An agriculturist is one who has anything to do with land. If he has got a verumpattom of his own he comes within the definition. That is the latitude shown in the definition of Agriculturist in the Act. So I can boldly submit that more than 95 per cent of these debtors will come under that definition.

Mr. President: Has the Hon'ble Member finished?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* To respond to your wishes, Sir, I shall finish just now.

So I submit, Sir, that the statement of the Hon'ble Member for Law that if this legislation is passed it will remain just a luxury is not right. There will be hundreds of agriculturist debtors to be benefited by this legislation. Therefore I respectfully submit, Sir, that it will be a great relief to a very large number of the subjects of His Highness the Maharaja if this amendment is passed. It is in that light you have to view it We have got a right cause to be served and so I pray to the House that this amendment may be accepted and also appeal to the authorities that when the Bill is passed it may immediately be placed before His Highness for approval wherefrom alone this relief can be had. This I think will be done before we meet next time. I have done, Sir, I commend the amendment to the House.

Mr. President: The question is that after clause 3, clause 4 be inserted as part of the Bill.

Motion put

Mr. President: I think the "Noes" have it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* A poll, Sir.

The House divided

Ayes

1. Mrs. T. Francis
2. „ Dakshayani Velayudhan
3. Mr. K. R. Ramakrishnan
4. „ Thevanna Goundan
5. „ T. K. Nayar
6. „ P. Narayana Menon
7. „ P. Kumaran Ezhuthassan
8. „ P. Govinda Menon
9. „ V. R. Krishnan Ezhuthassan
10. „ P. Achutha Menon
11. „ P. T. Jacub
12. „ C. S. Panicker
13. „ P. Sankara Menon
14. „ M. K. Raja
15. Mr. P. K. Paul
16. „ M. I Paul
17. „ G. S. Dhara Singh
18. „ P. Mani
19. „ P. Balakrishna Menon
20. „ Deputy President
21. „ K. S. Panicker
22. „ K. T. Achuthan
23. „ M. K. Verghese
24. „ K. I. Velayudhan
25. „ P. V. Sebastain
26. „ Paramel Ipe Ipe
27. „ K. K. Kannan
28. „ P. K. Dewer
29. „ K. Kochukuttan

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Noes

1. Mr. S. S. Koder
2. ,, P. E. Warne
3. Dr. S. S. Rao
4. Rao Bahadur T. S. Narayana Ayyar
5. Rao Sahib P. V. Raphael
6. ,, I. N. Menon
7. Rao Sahib A. Madhava Prabhu
8. Mr. B. V. K. Menon
9. ,, M. Sivarama Menon
10. ,, K. S. Raghavan
11. ,, C. J. Mathew
12. Rao Sahib M. M. Paul
13. Mr. S. Venkiteswaran

29 for and 13 against

Motion was, therefore, declared carried

At 1-53 p.m. the House rose for lunch and reassembled at 2-45 p.m. with the Honb'le Deputy President in the Chair.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: I move, Sir, that after clause 4 the following may be added as clause 5.—

"5. At the end of the Explanation to section 25 of the Act remove the full stop and add the words 'and the above proviso shall have application only to the stay referred to in the section'."

Why I find it necessary to move this amendment is that in the judgment of the 10 Cochin Law Journal Case, to reinforce the arguments that the application for scaling should be put in within 90 days, reference is seen to have been made to the existance of the 60 days period mentioned in section 25 of the Act. This reference and the argument based on that is not seen to be happy at all. For section 25 contemplates a case of vigorous execution of the decree wherein stay can be obtained by the judgment debtor. In cases where such stay has been obtained the judgment debtor is directed to put in the scaling down petition within 60 days of the grant of the stay failing which a penalty is prescribed. The object of the amendment is to make it clear that the 60 days period mentioned in section 25 is applicable to the case contemplated therein and not to anything else. This is what the Select Committee says about this amending clause.—

"Clause 5 of the amending Bill is intended to clarify that the period of 60 days mentioned in section 25 is applicable only to the poriod of the stay of the proceedings mentioned in that section". What is stated in Section 25 is, where decrees are actually in execution after the passing of the Agriculturists Relief Act, and where the judgment debtor has actually to pay money and wants time for having his decree scaled down, the Court shall grant a stay of execution and the debtor is given a period of 60 days within which time he has to apply to the court which passed the decree for having the decree scaled down under the provisions of the Act. If he fails to put in the the petition within 60 days period of time allowed to him or if the petition put in is disallowed by the court then in either case the decree holder is allowed to execute the decree as if the decree is not scaled down. That and that alone is the scope of Section 25. Section 25 contemplates a case where decree holders who are vigilant of their rights and are always on the move so far as the realisation of the decree is concerned. And in such cases there may arise the necessity to apply even before 90 days for having the decree scaled down for the Agriculturist Relief Act does not prevent execution of decrees. It is only to meet such cases of vigorous execution of decrees that section 25 has been enacted with a period of 60 days from the date of the stay order to apply for scaling down. Section 25 says, he shall be given 60 days time to put in a petition to get his decree scaled down. He may apply or not apply. In that case and also in the case he applies and that is disposed of, and there is no scaling down: in either of these two cases the decree holder can realise the whole amount of the decree as it originally stood. If the argument in the 10 Cochin Journal case is carried to its logical conclusion it would mean that the scaling down petition is to be put in within 60 and not 90 days of the coming into force of the Agriculturists Relief Act. This certainly cannot have been the intention of the Legislature which under section 24 gives 90 days to put in the scaling down petition. Now that clause 4 has been passed I do not think there will be any opposition from the Government even. I commend the amendment for unanimous acceptance of the house.

Mr. M. Sivarama Menon *(Advocate General)*: Sir, I oppose the amendment proposed to be introduced by clause 5 of this Bill, consistently with the position that has been assumed by the Government in respect of this amendment. I need not advert again to the ground advanced for and against in the discussion of the other clauses and now the Mover's intention which ought

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to be more prominent is a fact that in interpreting Section 24 Section 25 may be used as a bar. Even in the same manner that in interpreting Section 24 and the relevant provision in Section 25 it may not be used for holding that 90 days is a period which is compulsory. Of course I oppose the amendment.

Mr. P. Kumaran Ezhuthassan (*Vadakkancheri*) : Sir, I have nothing to add. I press the amendment.

Motion put and carried

Mr. President: Clause 5 stands part of the Bill.

Clause 1 Title and Preamble put and carried

2. The Cochin Newspapers Act (Repeal) Bill

Mr. V. R. Krishnan Ezhuthassan *(Oorakam)*: I move that the Cochin Newspapers Act (Repeal) Bill be introduced in Council.

Mr. Deputy P. Govinda Menon *(Ernakulam)*: I second it.

മിസ്റ്റർ വി. ആർ. കൃഷ്ണനെഴുത്തച്ഛൻ: സർ, ഈ ബിൽ വളരെ പ്രധാനമായ ഒരു വിഷയത്തെ സംബന്ധിച്ചുള്ളതാണു്. കൊച്ചി ഗവമ്മെണ്ടു് ഒരു അടിയന്തരവ്യവസ്ഥ എന്ന നിലയിൽ ആറമാസത്തെ കാലാവുധിവെച്ചു പാസ്സാക്കിയതാണു് ആദ്യത്തെ പത്രനിയമം. അതിനുശേഷം പത്തു ദിവസം കഴിഞ്ഞപ്പോൾ ഉണ്ടായ നിയമസഭാ സമ്മേളനത്തിൽ ആ നിയമത്തെ ഒരു ബില്ലിന്റെ രൂപത്തിൽ അവതരിപ്പിക്കുകയും അതിനു നമ്മുടെ നിയമപുസ്തകത്തിൽ സ്ഥിരമായ സ്ഥാനം നൽകുവാൻ ഗവർമ്മെണ്ടു് നിയമസഭയോടപേക്ഷിക്കുകയും ചെയ്തു. അന്നത്തെ നിയമസഭയിലെ അനുദ്യോഗസ്ഥസാമാജികന്മാർ ഒത്തൊരുമിച്ചു് ഏറ്റവും ശക്തിയായ രീതിയിൽ അതിനെ എതിർക്കുകയും ഏകകണ്ഠമായ ആ എതിർപ്പിന്റെ ഫലമായി അതുപാടെ തള്ളപ്പെടുകയും ചെയ്തു. അതിനുശേഷം ഗവർമ്മെണ്ടു് അവരുടെ പ്രത്യേകാധികാരം പ്രയോഗിച്ചു സർടിഫൈ ചെയ്തു. അങ്ങനെ അതു നിയമമായി. ഇന്നുവരെ അതു നിലനില്ക്കുകയും ചെയ്യുന്നു. അങ്ങിനെ ആ നിയമം ഉണ്ടായതിനുശേഷമുണ്ടായ നിയമസഭയുടെ ഓരോ സമ്മേളനത്തിലും അതിനെ എതിർത്തുകൊണ്ടുള്ള ഖണ്ഡനോപക്ഷേപങ്ങളും പ്രമേയങ്ങളും മറവും ധാരാളം ഉണ്ടായിട്ടുള്ളതു് ഇവിടെയുള്ള എല്ലാവർക്കും അറിയാവുന്നതാണു്. ഫ്രാൻസിൽ, ഞാൻ ഇപ്പോൾ പ്രതിനിധീകരിക്കുന്ന ഊരകം നിയോജകമണ്ഡലത്തിലെ മെമ്പറായിരുന്ന ശ്രീമാൻ ഇക്കണ്ടവാര്യർ, ഞാൻ ഇവിടെ അവതരിപ്പിച്ചിരിക്കുന്ന അതേവാക്കുകളടങ്ങിയ ഒരു ബിൽ പത്രനിയമം റദ്ദു് ചെയ്കകിട്ടുവാനായി ഇവിടെ അവതരിപ്പിക്കുകയും ആ ബിൽ അനുദ്യോഗസ്ഥപക്ഷത്തിന്റെ പരിപൂർണ്ണമായ ആനുകൂല്യത്തോടുകൂടി പാസ്സാക്കുകയും ഉണ്ടായി.

മിസ്റ്റർ പി. കുമാരനെഴുത്തച്ഛൻ: അതെന്തായി?

മിസ്റ്റർ വി. ആർ. കൃഷ്ണനെഴുത്തച്ഛൻ: അതെന്തായി എന്ന ചോദ്യം കഴിഞ്ഞനിയമസഭയിൽ ഞാൻകൊണ്ടു വരുകയും അതിനുമറുപടിയായി അതിപ്പോഴും ഗവർമ്മെണ്ടിന്റെ അലമാരയിൽഭദ്രമായി ഇരിക്കുന്നുണ്ടെന്നു മറുപടികിട്ടുകയും ചെയ്തിട്ടുണ്ടു് എന്ന വിവരം എല്ലാവർക്കും അറിയാം. ഇങ്ങിനെയുള്ള ഒരു ചരിത്രത്തോടുകൂടിയ ആ നിയമത്തെ റദ്ദാക്കുവാനാണു് ഈ ബിൽ ഇവിടെ അവതരിപ്പിച്ചിട്ടുള്ളതു്. നമ്മുടെ എല്ലാവരുടേയും, കൊച്ചിരാജ്യത്തിലെ ഫർ ലക്ഷം ജനങ്ങളുടേയും, വെറുപ്പും വിരോധവും പ്രതിഷേധവുമുള്ള ഒരു വിഷയമാണു് ഈ പത്രനിയമം. അങ്ങിനെയുള്ള വെറുപ്പിനേയും വിരോധത്തേയും ആക്ഷേപത്തേയും അവഗണിച്ചുകൊണ്ടു്, ലവലേശം കണക്കാക്കാതെകണ്ടു്, ഗവർമ്മെണ്ടു് അവരുടെ സ്വേച്ഛാധികാരം പ്രയോഗിച്ചു്, നാമെല്ലാവരും ഇത്രയും കാലം ഭയപ്പെട്ടുകൊണ്ടിരുന്ന ആ ഫാസിസ്റ്റ് സമ്പ്രദായത്തിന്റെ ലക്ഷണങ്ങളെല്ലാമുള്ള അധികാരം പ്രയോഗിച്ചു്, ആ നിയമം ഇവിടെ നിലനിത്തിപോരുകയാണു് ചെയ്യുന്നതു്. ഈ നിയമം എന്തിനുണ്ടായി, എങ്ങിനെയുണ്ടായി, അതിന്റെ പ്രവർത്തനങ്ങൾകൊണ്ടു് എന്തെല്ലാം ഫലങ്ങളുണ്ടായി എന്നെല്ലാം ഇവിടെ ദീർഘമായി പ്രതിവാദിക്കേണ്ട ആവശ്യമുണ്ടെന്നു തോന്നുന്നില്ല. അയൽരാജ്യമായ തിരുവിതാംകൂറിലും ബ്രീട്ടീഷു സംസ്ഥാനങ്ങളിലും മറ്റനേകം നാട്ടു രാജ്യങ്ങളിലുമുള്ള വ്യവസ്ഥയാണു് ഇതെന്നും ഈ വ്യവസ്ഥ കൊണ്ടല്ലാതെ ഈ നാട്ടിലെ ജനങ്ങളെ രക്ഷിക്കുവാൻ സാധിക്കുകയില്ലെന്നും മറ്റുമുള്ള വാദങ്ങളോടു കൂടിയാണു് ഈ നിയമിത്തിനു് ആധാരമായ

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